



April 6, 2011

Ms. Sharon Gillett
Chief
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Request for Clarification
North American Numbering Plan Administrator Neutrality Requirements
CC Docket No. 92-237

Dear Ms. Gillett:

NeuStar, Inc. ("Neustar"), the North American Numbering Plan Administrator ("NANPA") and the Pooling Administrator ("PA"), hereby respectfully requests clarification that, consistent with section 52.12 of the Federal Communications Commission's ("Commission") rules,¹ Neustar is permitted to issue debt, without prior Commission approval, so long as the company does not issue a majority of its debt to any telecommunications service provider ("TSP"). Neustar seeks prompt action on its request so as to remove uncertainty about the applicable debt requirements, because, as they are apparently understood, these requirements impede Neustar's access to capital and place significant burdens on both Neustar and the Commission.

The language in section 52.12 regarding debt is plain – "the NANPA . . . and any affiliate thereof, may not issue a majority of its debt to . . . any telecommunications service provider."² Yet, through a series of subsequent transaction-specific orders and letters, Neustar seems to have been directed, contrary to what the rule required, to obtain prior agency approval for any debt issuance to a TSP or TSP affiliate,³ regardless of the size of the debt issuance.⁴ This "gloss" on

¹ 47 C.F.R. § 52.12. Although this rule refers specifically to the NANPA, section 52.20(d)(1) of the Commission's rules, 47 C.F.R. § 52.20(d)(1), extends these neutrality provisions to the PA as well.

² 47 C.F.R. § 52.12(a)(1)(ii). Section 52.12(a)(1)(ii) also prohibits the NANPA and any affiliate from deriving a majority of its revenues from any TSP.

³ An "affiliate" is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person is deemed to control another if such person directly or indirectly possesses a 10 percent or greater equity interest in the other person, the power to vote 10 percent or more of the securities for election of directors, general partner, or management of the other person, or the power to direct or cause the direction of the management and policies of the other person. 47 C.F.R. § 52.12(a)(1)(i).

⁴ The prior approval requirement for any debt issued to TSPs and the inclusion of TSP affiliates within the prior approval requirement first appeared in the *Safe Harbor Order* where the Commission stated that it was retaining

the regulation (or perhaps dicta) – which has no legal basis – places a substantial burden on both Neustar and the Commission. The breadth of the language means that any offering that could result in even a small amount of debt being held by a TSP is subject to prior review. And, by including “TSP affiliates”, the language effectively encompasses most potential lenders, with the result that Neustar, a diversified, widely held, public company, finds it extremely challenging to access credit markets on favorable terms, potentially affecting its business operations and competitiveness. Moreover, the agency is – and will be – repeatedly and unnecessarily faced with the need to review and act upon Neustar’s requests for prior approval of particular debt issuances on a highly accelerated schedule. Accordingly, Neustar seeks clarification that the only limitation on the company’s ability to issue debt is that contained in the plain language of the rule.

The Language of the Rule Is Plain and Unambiguous.

Section 52.12 unambiguously provides that “the NANPA . . . and any affiliate thereof, may not issue a majority of its debt to . . . any telecommunications service provider.”⁵ In the *Warburg Transfer Order*, the Commission explained that the purpose of this provision was to “serve as [an] objective, quantifiable measure[]” of neutrality that would “ensure that the NANPA is able to comply with its obligations without extensive and constant Commission oversight.”⁶ Neustar seeks clarification that this objective measure set out in the text of the rule governs its future debt transactions – specifically, that it need not secure prior approval to issue debt to a TSP affiliate or less than a majority of its debt to any TSP.

The requested clarification is consistent with the plain and unambiguous language of the rule and its underlying intent. The wording of the rule’s debt provision makes clear that the Commission was not concerned with the issuance of debt to a TSP affiliate or that such issuance would affect Neustar’s neutrality in any way. Indeed, the debt limitation in the rule does not even mention TSP affiliates.⁷ This is in contrast to the equity limitation in the rule which expressly refers to

its requirement that Neustar receive prior approval to obtain debt from TSPs or TSP affiliates. *N. Am. Numbering Plan Admin., NeuStar, Inc., Request to Allow Certain Transactions Without Prior Comm’n Approval and to Transfer Ownership*, Order, 19 FCC Rcd 16,982, 16,992 (¶ 26) (2004) (“*Safe Harbor Order*”). Rather than “retaining” an existing rule, however, this language created wholly new requirements without providing a rationale for doing so.

⁵ 47 C.F.R. § 52.12(a)(1)(ii).

⁶ *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Commc’ns Ind. Servs. Business*, Order, 14 FCC Rcd 19,792, 19,808 (¶ 24) (1999) (“*Warburg Transfer Order*”).

⁷ The Commission previously found that Warburg’s investment in Neustar (which would comprise more than 50 percent of Neustar’s revenue) did not constitute a violation of section 52.12(a)(1)(ii), despite the fact that Warburg was a TSP affiliate. *Id.* at 19,810 (¶ 27).

affiliates of TSPs and defines the term.⁸ The plain language of the rule also indicates that the Commission was not concerned that the issuance of less than a majority of Neustar debt directly to any TSP would affect Neustar's neutrality.⁹ The "objective, quantifiable measure" in the rule states plainly that neutrality concerns are triggered only when any TSP debtholder holds a majority of Neustar debt.

Moreover, there is surely no policy reason for the Commission to have attempted to broaden the debt limitation in the rule to extend to debt issued to TSP affiliates or to less than a majority of debt issued to any TSP. Merely holding a company's debt generally provides no basis, on its own, for a debtholder to exert control over a company's operations. Absent specific rights in the debt instrument, lenders do not have the right to elect directors, approve major transactions, or direct the borrower company's operations. This is certainly the case if an entity holds less than a majority of the total debt of the company. For this reason, the Commission has repeatedly found that conventional debt issuances do not grant undue influence over a company.¹⁰

Further, the broad scope and diversity of the telecommunications industry today make it hard to conceive how Neustar's issuance of debt to TSP affiliates or less than a majority of debt to any TSP could in any way interfere with the purpose of the neutrality rule – that "no particular industry segment, consumer group or technology is unduly favored or disadvantaged" and that the NANPA "maintain[s] the trust and confidence of the entities that must submit sensitive data to the NANPA in its numbering administration activities."¹¹ The telecommunications marketplace has diversified dramatically since section 52.12 was adopted back in 1997. In the late 1990s, non-incumbent telephone companies had only about 4.3 percent of all end user

⁸ See 47 C.F.R. § 52.12(a)(1)(i).

⁹ The Commission's neutrality rules were drawn directly from the NANPA selection requirements developed by the North American Numbering Council ("NANC"), the Federal Advisory Committee that advises the Commission on numbering issues. *N. Am. Numbering Plan Admin.*, Third Report and Order, 12 FCC Rcd 23,040, 23,049-50 (¶ 17) & 23,076 (¶ 69) (1997). Although the NANC recommended strict limits on the NANPA's equity held by TSPs or TSP affiliates, it felt that preventing a majority of the NANPA's debt from being held by a TSP was sufficient to protect against discrimination. Thus, the entities comprising the NANC, including service providers that would be very concerned about possible discrimination, felt that the language that eventually became the rule would be sufficient to preserve neutrality.

¹⁰ See *Stratos Global Corp., Transferor, Robert M. Franklin, Transferee, Consolidated Application for Consent to Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 21,328, 21,353-354 (¶ 57) (2007) (finding that Inmarsat's debt holdings of a trust acquiring Stratos did not render Inmarsat the real party in interest in the transaction and did not demonstrate control over Stratos). See also *News Int'l, plc*, Memorandum Opinion and Order, 97 F.C.C.2d 349, 355-56 (¶ 16) (1984) ("The influence must be to the degree that the minority shareholder is able to 'determine' the licensee's policies and operation or 'dominate' corporate affairs.").

¹¹ *Warburg Transfer Order*, 14 FCC Rcd at 19,808 (¶ 24).

switched access lines;¹² by December 2009 this number had increased nearly seven-fold, with 30 percent of all switched access and VoIP connections being provided by non-ILEC service providers.¹³ Over a similar period, the number of wireless subscribers increased dramatically from less than 70 million to nearly 280 million.¹⁴ In 1996, cable providers had few telephony customers; today, cable providers have over 22 million telephony subscribers.¹⁵ The third and fourth largest wireless companies today have more subscribers than the total “access lines” of the first and second largest incumbent telephone companies.¹⁶ As a result, the number of competitive local exchange carriers has increased four-fold from 212 to 813; the number of interconnected VoIP providers has increased from 0 to 334.¹⁷ And, currently, over 90 percent of the population of the United States has the ability to choose telephone service from six different providers.¹⁸ This diversity of telecommunications service providers and their proportionate representation on the Federal Advisory Committee with oversight over numbering issues has virtually foreclosed the ability and incentive of the numbering administrator to favor any one industry segment or company over another. As such, there is no policy basis for reading the debt limitation of section 52.12 more broadly than the plain language of the rule.

¹² See FCC, Common Carrier Bureau, Industry Analysis Division, *Local Telephone Competition at the New Millennium*, Table 4 (Aug. 2000) available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0800.pdf.

¹³ See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2009* at 5 (Jan. 2011) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304054A1.pdf (last visited Mar. 9, 2011).

¹⁴ Compare *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 14 FCC Rcd 10,145, 10,152 (1999) (Noting year end 1998 mobile telephone subscribership of over 69.2 million) to *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, 25 FCC Rcd 11,407, 11,414 (2010) (“CMRS 2010 Report”) (Noting that at the end of 2008 there were over 277 million mobile subscribers).

¹⁵ See National Cable and Telecommunications Association, “Cable Phone Customers” <http://www.ncta.com/Stats/CablePhoneSubscribers.aspx> (last visited Mar. 9, 2011).

¹⁶ Compare *CMRS 2010 Report*, 25 FCC Rcd at 11,415 to *September 2010 Trends Report* at Table 7.3., available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf (last visited Mar. 8, 2011). Because the Commission shows 2008 loop data for AT&T and Verizon, this analysis assumes that Verizon and AT&T continued to lose access lines in 2009 and 2010 at pace equivalent to prior years.

¹⁷ *Trends in Telephone Service*, Wireline Competition Bureau, at Table 15-3 (September 2010) (*2010 Trends Report*).

¹⁸ *CMRS 2010 Report*, 25 FCC Rcd at 11,448 (¶ 42, Table 4).

The Current Practice Is Unduly Burdensome to Both Neustar and the Commission.

Understanding Neustar's debt limitation to require prior agency approval for any debt issuance to a TSP or TSP affiliate, regardless of the size of the debt would be unnecessarily burdensome to both Neustar and the FCC. This understanding requires Neustar to request prior approval for virtually any debt issuance. This makes it harder for the company to obtain necessary financing at competitive rates, and it imposes significant administrative costs on the Commission.

Both Neustar and the credit markets have changed significantly since this description of the debt limitation first appeared in the *Safe Harbor Order*. Neustar is a significantly larger company with a more diverse business. When the *Safe Harbor Order* was adopted in 2004, Neustar was still a small privately held entity. Now Neustar is a public company engaged in multiple lines of business. It is typical for a company of Neustar's size to take on debt in the ordinary course of business and to engage in transactions that require billions of debt. Yet, the debt limitation at issue is an impediment to Neustar doing so.

Given the dramatic growth in the telecommunications industry discussed above and the telecommunications sector's significant need for capital to fund expensive network improvements, financial institutions that have both the expertise and resources to provide multi-billion dollar commitments to Neustar are likely already to have ownership interests in a variety of telecommunications sector enterprises. Because of the broad scope of the TSP affiliate definition (affiliation is achieved by a direct or indirect equity or voting interest of 10 percent or more), the vast majority of commercial lenders and other potential Neustar debtholders are likely to qualify as "TSP affiliates" triggering the supposed need for prior approval assumed in the *Safe Harbor Order*. This effectively eliminates most otherwise viable opportunities for Neustar to secure monies needed for expansion. If agreeing to hold Neustar debt subjects a potential debtholder to a time-consuming review of its many other investments (and those companies' investments), a non-routine review process before a federal agency with which it is not familiar, and/or ongoing restrictions against investing in TSPs, many financial entities will elect – and have elected – not to deal with Neustar. Many potential investors do not have a ready means of surveying and identifying direct and indirect TSP interests out of their potentially hundreds or thousands of investments. Further, the nature of their investments is likely to change over time, making any snapshot of their holdings at a given moment ultimately meaningless.

If a potential debtholder does elect to deal with Neustar despite these burdens, it is likely to do so on terms less favorable than Neustar might otherwise obtain. Not surprisingly, a lender would likely pass onto Neustar the costs and risks associated with an in-depth review of its investments and prior Commission approval and restrictions on future investments. Moreover, even if a potential investor were willing to subject itself to these burdens, the delay associated with securing such approval could prevent Neustar from successfully pursuing certain business strategies. Particularly in a competitive bidding situation, even a fast-paced approval process is likely to place Neustar at a substantial disadvantage.

Similarly, prohibiting the issuance of less than a majority of Neustar's debt to any TSP absent prior approval also presents significant commercial challenges to Neustar. Certain types of debt (*e.g.*, public debt) are freely transferable, precluding Neustar's ability always to know the identity of the debtholder – let alone have an opportunity to secure Commission approval for the transfer. Most large lending arrangements of the type contemplated by Neustar involve some element of public debt and lenders want the flexibility to incorporate that debt vehicle into their lending strategy. By precluding the issuance of any debt to a TSP, the current interpretation of the rule precludes the use of this type of debt, tying the hands of lenders and in many cases discouraging them from working with Neustar.¹⁹

Limiting Neustar's ability to access debt in this manner is particularly problematic in today's very competitive capital markets. Recent growth in the telecommunications sector has significantly increased competition for capital. Because of the added uncertainty and administrative burden created by the FCC's current interpretation of Neustar's debt limitation, the company has found it increasingly challenging to access the outside resources it needs to expand and pursue its growth strategy which would include significant employment opportunities in high quality jobs. As a result, Neustar currently has virtually no debt. Easier access to debt would allow Neustar to be better able to invest and grow, as well as to return more value to its investors. Neustar is committed operationally to ensuring neutrality, but the current debt limitation – that goes far beyond the plain language of the rule – is a significant commercial impediment.

The supposed need for prior approval of TSP or TSP affiliate debt also creates unnecessary administrative costs for the FCC. Because of the fast-paced and confidential nature of debt issuances, transactions tend to come before the agency only when they are in the final stages and need immediate approval. This structure necessitates a flurry of activity between Neustar and the FCC, and within each entity, in order to achieve the necessary approvals pursuant to an accelerated commercial schedule. For the Commission to have to act in such an accelerated timeframe – and potentially on a repeated basis as future transactions arise – is neither feasible nor an effective use of the agency's already (and increasingly) stretched resources.

Existing Safeguards Will Ensure Neustar's Continued Neutrality.

The grant of the requested relief itself will not in any way jeopardize Neustar's neutrality. In addition, ample safeguards will remain in place to ensure that Neustar continues to execute its numbering administration duties faithfully and impartially. Because the requested relief will not change the protections contained in section 52.12, the strong oversight of the NANC, the quarterly neutrality audits to which Neustar is subject, or the company's other commitments under its Code of Conduct, there is no cause for concern about its continued neutrality.

¹⁹ The rule's plain language is more workable. By permitting the issuance of less than a majority of debt to any TSP, the rule would allow the company and its lenders to have the flexibility to use such types of debt but to ensure compliance by limiting them to less than 50 percent of the overall debt issuance.

First, the requested relief does not seek to amend section 52.12 and thus in no way will modify the neutrality criteria contained in this provision of the Commission's rules. The Commission determined that the protections of section 52.12 were sufficient to ensure Neustar's neutrality in 1997, and they are clearly more than sufficient to achieve that goal given today's much larger and more diverse telecommunications sector.²⁰

Second, Neustar will remain subject to vigorous NANC oversight. Section 52.12 empowers the NANC to monitor Neustar's activities and conduct an evaluation to determine whether it is subject to any undue influence. NANC rigorously monitors Neustar through its Numbering Oversight Working Group ("NOWG"), composed of industry representatives, that meet separately with the NANPA and PA each month to review, *inter alia*, their performance and to address complaints regarding the administrators. NANC's involvement ensures Neustar's impartiality through its diverse membership and transparent oversight of numbering issues. Since its establishment, the NANC has consistently demonstrated its ability to fairly and vigorously protect the interests of the entire telecommunications industry, and its consumers. The NANC's voting members include representatives from the wireline, wireless, VoIP, cable, consumer and state regulator communities. Given the strength of NANC oversight and the number of companies involved in numbering issues, Neustar could not practicably favor any particular company or industry segment, even notwithstanding its other neutrality obligations.

Third, Neustar's NANPA and LNP activities will remain subject to quarterly neutrality audits by an independent third party, as required by the Commission's *Warburg Transfer Order*,²¹ the results of which are made public. As the Commission has previously recognized, these audits provide strong incentive for Neustar to maintain its neutrality as well as provide a means for prompt identification and correction of any neutrality issues that might arise.²² In addition, the industry limited liability corporation overseeing its LNP contracts requires Neustar to undergo a separate LNP neutrality audit each year.

Finally, Neustar will remain subject to the other commitments in its Code of Conduct, adopted in the *Warburg Transfer Order*.²³ In addition to the quarterly audits, the Code prohibits Neustar from showing any preference to a TSP, from having access to any user data or proprietary information of the TSPs it serves, and from sharing any confidential information about Neustar's business services and operations with employees of any TSP.²⁴ The Commission has explicitly

²⁰ The telephone marketplace evolution has led to a significant increase in the diversity of telecommunications service providers, which in turn has decreased the ability and incentive of the numbering administrator to favor any one particular segment or company over another.

²¹ *Warburg Transfer Order*, 14 FCC Rcd at 19,813-14 (¶¶ 35-36).

²² *Id.*

²³ *Id.* at 19,816 (Appendix A).

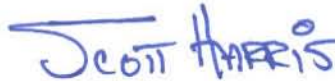
²⁴ *Id.*

recognized that this Code of Conduct “is an additional safeguard that should provide an additional, appreciable level of protection against the exercise of undue influence” by Neustar’s investors and debtholders.²⁵

* * *

Accordingly, Neustar respectfully requests that the Commission confirm that, consistent with section 52.12 of the Commission’s Rules, Neustar is permitted to issue debt, without prior Commission approval, so long as the company does not issue a majority of its debt to any TSP. As explained above, this request is wholly consistent with the letter and intent of the Commission’s rules, will alleviate substantial burdens currently imposed upon both Neustar and the Commission, and will in no way jeopardize Neustar’s continued neutrality with respect to the execution of its numbering administration duties. So as to remove uncertainty about the requirements to which the company is subject and to allow the company to compete fully and effectively in the marketplace, Neustar requests prompt action on this request.

Respectfully submitted,

A handwritten signature in blue ink that reads "SCOTT HARRIS". The signature is stylized with a large, sweeping initial "S" and the name "HARRIS" in all caps.

Scott Blake Harris
Executive Vice President
Legal and External Affairs

²⁵ *Id.* at 19,813 (¶ 34).